

OGC Has Reviewed

OGC 77-3813

15 June 1977

MEMORANDUM FOR: Deputy Director of Personnel

STATINTL

FROM : [REDACTED]
Office of General Counsel

STATINTL

SUBJECT : [REDACTED] Claim for Backpay

STATINTL

REFERENCES : A. Memorandum to DD/Personnel from
[REDACTED] dated 1 November 1976.
B. Civil Service Commission Bulletin No. 300-40,
with Attachments Nos. 1 and 2 (25 May 1977).

STATINTL

1. Pursuant to your inquiry of 6 May 1977, concerning backpay awards for employees detailed to higher-graded positions beyond 120 days without prior Civil Service Commission approval, please be advised that the Office of General Counsel reaffirms its previous determination (Referent A) that CIA employees in circumstances similar to those of [REDACTED] are entitled to neither retroactive temporary promotions nor to backpay. That determination is further supported by the Civil Service Commission at Referent B.

2. Referent A is a comprehensive memorandum of law prepared by this Office on the subject of extended details to higher-graded positions. It concludes by stating:

...[Y]ou should deny each claim and inform claimants that the Comptroller General decisions [B-183086 and B-184990] are inapplicable to Agency personnel.

On 23 March 1977, the General Accounting Office affirmed its decision in B-183086, and the Civil Service Commission shortly thereafter issued Referent B to the heads of federal departments and agencies. Referent B is intended to clarify the Comptroller General decision and provide guidelines to federal agencies to assist them in the application of that decision.

3. Referent B contains a clear declaration on the scope of the Comptroller General decision and the related Civil Service Commission instructions.

Scope of Commission Instruction. The Commission's instruction for securing prior approval for continuation of details beyond 120 days relates only to details within the same agency of employees serving in competitive positions and, in the excepted service, positions under the General Schedule. Since the GAO decision follows the Commission's instruction, it would not apply to positions beyond that scope.... Id. at 4 (Emphasis added).

CIA employees are not in the competitive civil service; nor are they in the excepted civil service under the General Schedule. The Agency is specifically exempted from the Classification Act and the General Schedule by 5 U.S.C.A. §5102, and the Comptroller General has previously ruled that the CIA is not subject to 5 U.S.C.A. §3341, concerning the detailing of employees, by virtue of the Agency's unique appropriations authority in section 8 of the CIA Act. (B-140877, 1 December 1959) Therefore, to the extent that [REDACTED] claim is based on Comptroller General Decisions B-183086 and B-184990, it should be denied.

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[REDACTED]

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